

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ALAN JUSTIN SMITH,

Petitioner,

v.

JEFFREY UTTECHT,

Respondent.

CASE NO. 2:21-cv-00940-TL

ORDER DENYING MOTION TO
AMEND OR MODIFY JUDGMENT

This matter comes before the Court on Petitioner Alan Justin Smith's "Motion to Amend or Modify Judgment Denying Petitioner's Rule 60(b)(1) Motion." Dkt. No. 73. Having reviewed the motion and the relevant record, the Court DENIES the motion.

I. PROCEDURAL BACKGROUND

On November 19, 2021, Petitioner, a state prisoner incarcerated at Coyote Ridge Corrections Center in Connell, Washington, submitted a Second Amended Petition for Writ of Habeas Corpus under 28 U.S.C. § 2254, seeking relief from a 2015 Snohomish County Superior Court judgment and sentence. Dkt. No. 24. On April 13, 2022, United States Magistrate Judge S. Kate Vaughan issued a Report and Recommendation on the Second Amended Petition. Dkt. No.

37. Judge Vaughan recommended that: (1) the habeas petition be denied; (2) the case dismissed with prejudice; and (3) that a certificate of appealability be denied. *Id.* at 24. Over the next several months: Petitioner filed objections to the Report and Recommendation (Dkt. No. 42); Respondent responded to those objections (Dkt. No. 50); and Petitioner filed a “Motion for Protection and Other Victims’ Rights” (Dkt. No. 43), which Judge Vaughan denied (Dkt. No. 49) after the Court referred the matter to her. On August 12, 2022, this Court adopted Judge Vaughan’s Report and Recommendation on the Second Amended Petition for habeas, overruled Petitioner’s objections, and entered judgment dismissing the case with prejudice. Dkt. Nos. 51 (Order), 52 (Judgment).

Petitioner began seeking relief from the Court’s judgment on September 9, 2022, filing a Motion to Set Aside or Alter Judgment (Dkt. No. 53) on that date and a Motion to Expedite the Court’s ruling on December 5, 2022 (Dkt. No. 55). On December 19, 2022, the Court denied both of these motions. Dkt. No. 56.

On January 18, 2023, Petitioner moved the Court to issue a certificate of appealability (Dkt. No. 57) and, concurrently, filed an appeal with the Ninth Circuit (Dkt. No. 58). On March 27, 2023, after Petitioner had amended his motion (Dkt. No. 65), the Court denied the amended motion and declined to issue a certificate of appealability (Dkt. No. 66). Approximately six months later, on September 18, 2023, the Court of Appeals denied Petitioner’s request to that court for a certificate of appealability. Dkt. No. 67.

After one year without any activity in his case, Petitioner resumed filing motions with this Court. On September 16, 2024, he filed a pair of motions—a second motion for relief from this Court’s August 2022 adoption of Judge Vaughan’s Report and Recommendation (Dkt. No. 68); and an amended habeas petition stylized as a motion to amend (Dkt. No. 69). On November 18, 2024, the Court, noting that Petitioner had filed the former more than two years after the

1 Court's judgment, and, construing the latter as an unsubstantiated and unmeritorious request for
2 reconsideration, denied both motions. Dkt. No. 72.

3 On December 16, 2024, Petitioner filed the instant Motion to Amend or Modify
4 Judgment. Dkt. No. 73. Presented under Federal Rules of Civil Procedure 59(e) and 60(b), the
5 motion presents as another attempt to have the Court reconsider its adoption of Judge Vaughan's
6 original Report and Recommendation on the Second Amended Petition for habeas. *See generally*
7 *id.*

8 II. DISCUSSION

9 The Court construes Petitioner's Motion as comprising two requests. First, Petitioner
10 moves under Rule 59(e) to alter or amend this Court's 2022 Order and Judgment that adopted
11 Judge Vaughan's Report and Recommendation and dismissed with prejudice Petitioner's habeas
12 petition (Dkt. Nos. 51, 52). *See* Dkt. No. 73 at 17 (praying that the Court "vacate the order and
13 judgment that dismissed Petitioner's habeas petition" and "reopen habeas proceedings . . .").
14 Second, Petitioner moves under Rule 60(b) for relief from the Court's Order that denied
15 Petitioner's previous attempt to undo the dismissal of his habeas petition (Dkt. No. 72). *See* Dkt.
16 No. 73 at 17 (praying that the Court "modify or amend the related judgment denying Petitioner's
17 underlying motion as appropriate (Dkt 72)"). But although Petitioner purports to make this
18 request under Rule 60(b), it is more properly considered a request for reconsideration under
19 Local Civil Rule 7(h). In its prior ruling, the Court denied Petitioner's Motion for Relief from
20 Final Judgment (Dkt. No. 68) and his Motion to Amend Habeas Petition & Objections to R&R
21 (Dkt. No. 69). Dkt. No. 72 at 1. Petitioner's express request that the Court now revisit that ruling
22 is a request for reconsideration, not a request for relief from a judgment or order. *See*
23 *Worthington v. Wash. State Att'y Gen.'s Off.*, No. C10-118, 2013 WL 4647532, at *1 (W.D.
24 Wash. Aug. 29, 2013) (construing Rule 60(b) request to "vacate the previous order

